

(2017) 03 KAR CK 0053
In the Karnataka High Court
Case No : MFA No. 8455 of 2015 (MV)

Nagesh B.L.

APPELLANT

Vs

Branch Manager, National Insurance Co. Ltd., Bangalore

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 1054

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri. Chandrashekar Rodnavar, Advocate, for the Appellant; Sri. K.S Lakshminarasappe for B.C. Seetharama, Advocates, for the Respondent No. 1; Noticed Dispensed With, for the Respondent No. 2

Final Decision : Allowed

Judgement

B. Manohar, J.—Appellants are the claimants, being not satisfied with the quantum of compensation awarded in the judgment and award dated 8-6-2015 made in MVC No.3517/2014 passed by the Motor Accident Claims Tribunal, Bangalore (hereinafter referred to as "the Tribunal", for short) filed this appeal seeking enhancement of compensation.

2. Appellants are the father and mother of deceased Chethan. They filed a claim petition contending that on 19-4-2014 at about 1.30 p.m., while the deceased Chethan along with his friend was returning to Bangalore in a Santro Car bearing Registration No.KA-04/ME-9703 near Hiriyr Sugar Factory, driver of the said Santro car drove the same in a rash and negligent manner and dashed against the road-side fly-over wall, due to the said impact, the car turned turtle and fell into the road-side ditch. As a result of which, the deceased Chethan sustained grievous injuries to the vital parts of the body. Immediately after the accident, he was shifted to the Government Hospital, Hiriyr, wherein the doctors declared that "brought dead". In the claim petition, it was contended that the deceased was aged about 24 years as on the date of death; working as a Gym instructor

as well as driver and earning income of Rs.15,000/- p.m. Due to the rash and negligent driving of the Santro car, the accident had occurred and the claimants have lost their only son. The offending car is owned by the second respondent and insured with the first respondent therein. Hence, respondents 1 and 2 are liable to compensate the claimants and sought for compensation of Rs.20,00,000/-

3. The insurance company defended the case by filing the written statement.

4. After trial, the Tribunal held that the accident occurred due to the rash and negligent driving of the Santro car and son of the claimants died. The claimants are dependants of the deceased and hence they are entitled for compensation. The Tribunal taking the income of the deceased at Rs. 8,000/- p.m., deducting 50% towards his personal expenditure since he was a bachelor at the time of death, applying the multiplier 15 taking the age of the mother of the deceased who was aged about 40 years, awarded a sum of Rs.7,20,000/- towards loss of dependency; a sum of Rs.1,00,000/- towards loss of love and affection to the aged parents; Rs.10,000/- towards loss of estate and Rs.30,000/- towards conventional heads. In all, the Tribunal awarded compensation of Rs.8,60,000/- with interest at the rate of 8% p.a. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have preferred this appeal seeking enhancement of compensation.

5. I have heard Sri. Chandrasekhar Rodnavar, learned counsel appearing for the appellants and Sri. Lakshminarasappa K.S., learned counsel appearing for the first respondent. Perused the judgment and award and oral and documentary evidence.

6. The dispute in this appeal is with regard to quantum of compensation.

7. Occurrence of the accident and death of the deceased Chethan is not in dispute. Though the claimants claimed that the deceased was working as a Gym Instructor as well as the driver having driving license to drive the LMV and getting salary of Rs.15,000/- p.m., the Tribunal has not accepted the same on the ground that no document has been produced to substantiate the same. The owner of the gym was examined as P.W.2 and had produced the salary certificate. Except that, no other document was produced to show that the owner was paying him salary of Rs.15,000/- p.m. The judgment and award passed by the Tribunal is contrary to the law laid down by the Hon"ble Supreme Court. The deceased was a qualified Gym Instructor, in addition to that he was holding driving license to drive LMV. It is the case of the claimants that the deceased was doing driving work as well as Gym Instructor work both in the morning and evening hours. The Tribunal ought to have assessed the reasonable income while awarding compensation. The accident occurred in the year 2014. Even for the daily wage employees working in various Government Departments and the agricultural coolies, their monthly income would have been assessed between Rs.9,000/- to Rs.10,000/- per month. In the instant case, the deceased was

working as a Gym Instructor as well as driver. There is lot of demand for the experienced Gym Instructors as well as drivers. Hence, I am of the opinion that if the monthly income of the deceased is taken at Rs.11,000/-, it would meet the ends of justice. Further, as per the judgment of the Hon"ble Supreme Court reported in 2012 ACJ 2002 : (2012 AIR SCW 3901) in the case of Amrit Bhanu Shali and others v. National Insurance Company Limited and others and the latest judgment, reported in (2015) 6 SCC 347 : (AIR 2015 SC (Supp) 1130) in the case of Munnalal Jain and another v. Vipinkumar Sharma and others, the Hon"ble Supreme Court has laid down a law that the age of the deceased has to be taken into consideration while adopting the appropriate multiplier and not the age of mother of the deceased. In the instant case, the Tribunal had taken the age of the mother and applied the multiplier of 11 which is contrary to law. Hence, taking the monthly income of the deceased as Rs.11,000/- deducting 50% towards his personal expenditure since he was a bachelor and applying the appropriate multiplier 18, the claimants are entitled to compensation of Rs.11,88,000/- towards loss of dependency as against Rs.7,20,000/- awarded by the Tribunal, with interest at the rate of 6% p.a. the compensation awarded under all other heads is just and fair compensation and do not warrant interference by this Court.

8. Accordingly, I pass the following:

ORDER

9. The appeal is allowed in part. The judgment and award dated 8-6-2015 made in MVC No.3517/2014 passed by the Motor Accident Claims Tribunal, Bangalore is modified and the claimants are entitled to compensation of Rs.11,88,000/- as against Rs.7,20,000/- awarded by the Tribunal, with interest at the rate of 6% p.a., thereby the claimants are entitled to enhanced compensation of Rs. 4,28,000/-.